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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF PLACER

11 PLACER COUNTY DEPUTY SHERIFFS'
12 ASSOCIATION and NOAH FREDERITO,

13 Petitioners,

14 vs.

15 COUNTY OF PLACER,

16 Respondent.
17 _____

) Case No.: S-CV-0047770
)
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) **PETITIONERS' OPPOSITION TO**
) **RESPONDENT'S MOTION TO STRIKE**
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26
27
28

TABLE OF CONTENTS

I. INTRODUCTION.....5

II. LEGAL STANDARD5

III. ARGUMENT6

A. The County’s Motion to Strike Failed to Comport with the Controlling Statute...... 6

B. The Material the County Seeks to Strike is Relevant. 9

 1. The Disputed Material is Relevant for Attorney’s Fees and Damages.....9

 2. The Disputed Material Relates to the Crux of Petitioner’s Argument.10

 3. Each One of the Disputed Paragraphs is Relevant.11

 a. Paragraphs 12, 14, 15.11

 b. Paragraphs 10, 11, 13, 30, and 38-41.12

 d. Paragraphs 17-19 and 21.13

 e. Paragraph 20.....14

 f. Paragraphs 22 and 23.14

 g. Paragraph 24.....14

 h. Paragraphs 25-34, 47-48, and 52-53.15

 i. Paragraphs 35-37 and 58-63.....15

 j. Paragraphs 42-45.....16

 k. Paragraphs 46 and 49-50.16

 l. Paragraph 51.....17

 m. Paragraph 54-57.17

C. The Disputed Paragraphs Comply with California Standards of Pleading. 18

IV. CONCLUSION19

TABLE OF AUTHORITIES

Cases

<i>Allerton v. King</i> (1929) 96 Cal.App. 230	9
<i>Arnold v. Hibernia Savings & Loan Soc.</i> (1944) 23 Cal.2d 741	18
<i>B.L.M. v. Sabo & Deitsch</i> (1997) 55 Cal.App.4th 823	19
<i>Bach v. Cnty. of Butte</i> (1983) 147 Cal.App.3d 554	18
<i>Beck v. County of San Mateo</i> (1984) 154 Cal.App.3d 374	6, 18
<i>Burns v. Scoofy</i> (1893) 98 Cal. 271	18
<i>California Cannabis Coalition v. City of Upland</i> (2017) 3 Cal.5th 924	10
<i>California Farm & Fruit Co. v. Schiappa-Pietra</i> (1907) 151 Cal. 732	9
<i>City of Hawthorne ex rel. Wohlner v. H&C Disposal Co.</i> (2003) 109 Cal.App.4th 1668	12, 16
<i>Clauson v. Superior Court</i> (1998) 67 Cal.App.4th 1253	6
<i>Clements v. T. R. Bechtel Co.</i> (1954) 43 Cal.2d 227	9
<i>Cryolife, Inc. v. Superior Court</i> (2003) 110 Cal.App.4th 1145	6, 18
<i>Doe v. Cty. Of Los Angeles</i> (2007) 42 Cal.4th 531	14, 16
<i>Honan v Title Ins. & Trust Co.</i> (1935) 9 Cal.App. 2d 675	18
<i>Johnson v. Central Aviation Corp.</i> (1951) 103 Cal.App.2d 102	10
<i>Kugler v. Yocum</i> (1968) 69 Cal.2d 371	15

1	<i>Lein v. Parkin</i>	
2	(1957) 49 Cal.2d 397	18
3	<i>Linder v. Cooley</i>	
4	(1963) 216 Cal.App.2d 390	18
5	<i>Pridonoff v. Balokovich</i>	
6	(1951) 36 Cal.2d 788	14
7	<i>Townsend v. Super. Ct.</i>	
8	(1998) 61 Cal.App.4th 1431	7
9	<i>Viglione v. Cty. And Cnty. Of San Francisco</i>	
10	(1952) 109 Cal.App.2d 158	18
11	<i>Walker v. Los Angeles Cnty.</i>	
12	(1961) 55 Cal.2d 626,	12
13	Statutes	
14	Code of Civil Procedure section 1021.5	passim
15	Code of Civil Procedure section 431.10(b).....	6
16	Code of Civil Procedure section 435.5(a).....	6, 8
17	Code of Civil Procedure section 436	5
18	Code of Civil Procedure section 452	6, 18
19	Elections Code section 9125	10, 11
20	Evidence Code section 210	9, 11
21	Evidence Code section 664	12
22	Government Code section 800	passim
23	Other Authorities	
24	County Code section 3.12.040	passim
25		
26		
27		
28		

1 Petitioners Placer County Deputy Sheriffs' Association ("DSA") and Noah Frederito
2 (collectively, "Petitioners") respectfully submit the following Opposition to Respondent the County
3 of Placer ("Respondent" or "County") Motion to Strike on the grounds that the County did not
4 adequately meet and confer with Petitioners prior to filing the motion and that the motion identifies
5 no meritorious grounds on which to strike the disputed paragraphs.

6 **I. INTRODUCTION**

7 On September 28, 2021, the Placer County Board of Supervisors ("Board") unilaterally
8 repealed a 44-year-old wage initiative known as "Measure F." The Board took this action without
9 submitting the repeal to the voters in violation of the California Constitution and Elections Code.
10 Based on this unlawful repeal, the Board then imposed on the DSA wage increases that violated
11 Measure F. In response to the County's unlawful conduct, Petitioners filed a Petition for Writ of
12 Mandate and Complaint for Declaratory Relief on December 21, 2021. On January 21, 2022,
13 Petitioners filed an Amended Petition ("Petition"). The County has filed this motion ("Motion")
14 seeking to strike paragraphs 10-63 of the Amended Petition, claiming that those allegations are
15 irrelevant. As set forth more fully below, the County's claims are without merit.

16 First, the County did not comply with the statute governing motions to strike. The County
17 did not properly meet and confer with Petitioners over this motion, and the County failed to identify,
18 with specificity, which allegations should be stricken. Second, and more importantly, the 54
19 paragraphs the County seeks to strike are relevant to the proceeding. Finally, the Petition complies
20 with all applicable standards of pleading, rendering the County's attempt to strike any portion of
21 the Petition improper.

22 **II. LEGAL STANDARD**

23 Pursuant to California Code of Civil Procedure section 436 the Court, in its discretion and
24 under terms it deems proper, is authorized to strike out any "irrelevant, false, or improper matter
25 inserted in any pleading." The Court may also strike out all or any part of a pleading "not drawn
26 or filed in conformity with the laws of this state, a court rule, or an order of the court." (*Ibid.*)

27 An immaterial or "irrelevant" allegation is one that is not essential to the statement of a
28 claim or defense, or an allegation that is neither pertinent to nor supported by an otherwise sufficient

1 claim or defense, or a demand for judgment requesting relief not supported by the allegations in the
2 pleading. (Code Civ. Proc. § 431.10(b).) Allegations in pleadings are to be “liberally construed.”
3 (Code Civ. Proc. § 452.) When reviewing pleadings, courts draw all reasonable inferences in favor
4 of the allegations therein. (*Beck v. County of San Mateo* (1984) 154 Cal.App.3d 374, 379.)
5 Moreover, courts “read allegations of a pleading subject to a motion to strike **as a whole, all parts**
6 **in their context**, and assume their truth. (*Cryolife, Inc. v. Superior Court* (2003) 110 Cal.App.4th
7 1145, 1157 [citing *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255] [emphasis
8 added].)

9 III. ARGUMENT

10 The County seeks to strike the vast majority of the Petition (54 of 93 relevant paragraphs –
11 over half of the Petition) on the grounds that the County has unilaterally deemed the paragraphs
12 irrelevant. (See Motion, p. 6.) The County’s Motion cannot be granted. The County failed to
13 adequately meet and confer with Petitioners and also failed to identify the grounds for objecting to
14 each allegation. Instead, the County discussed the 70 allegations collectively and its grounds for
15 objections in broad strokes. Accordingly, the County failed to comply with the controlling statute.
16 Further, the material the County seeks to strike is directly relevant to the causes of action set forth
17 in the Petition, and thus cannot be properly stricken. The Petition is adequately and properly
18 pleaded, and the disputed paragraphs should not be stricken. Instead, the disputed material should
19 be liberally construed and presumed true. Thus, the County’s Motion to Strike should be denied in
20 its entirety.

21 **A. The County’s Motion to Strike Failed to Comport with the Controlling Statute.**

22 Prior to filing a motion to strike, the moving party is required to meet and confer with the
23 party who filed the pleading to determine if an agreement can be reached. (Code Civ. Proc. §
24 435.5(a).) If an amended pleading is filed, the parties must meet and confer again regarding the
25 amended pleading. (*Ibid.*) As part of the meet and confer process, the moving party must identify
26 “all of the specific allegations that it believes are subject to being stricken and identify with legal
27 support the basis of the deficiencies.” (Code Civ. Proc. § 435.5(a)(1) [Emphasis added].) The
28 parties shall meet in good faith. (Code Civ. Proc. § 435.5(a)(2).) Such a good faith attempt involves

1 more than merely trying to convince the other side “of the errors of their ways.” Rather, it requires
2 “a serious effort at negotiation and informal resolution”, which includes talking the matter over,
3 comparing viewpoints, consultation, and deliberation. (*Townsend v. Super. Ct.* (1998) 61
4 Cal.App.4th 1431, 1435-39.)

5 On January 7, 2022, Respondent’s counsel, Michael Youril, contacted Petitioners’ counsel,
6 David E. Mastagni, via an email regarding his intention to demur to the Petition for Writ of
7 Mandate and to move to strike paragraphs 10-80 of the Petition for Writ of Mandate. (Declaration
8 of David E. Mastagni ISO Opposition to Motion to Strike (“Mastagni Dec.”) ¶ 4.) The only basis
9 for the motion to strike stated in the email was, “[m]ost of the above is irrelevant to the pending
10 matter and primarily involves matters that are still pending before the PERB Board.” (Mastagni
11 Dec. ¶ 4, Exh. 1.) On January 12, 2022 at 9:30 am, counsel for Petitioners, David E. Mastagni and
12 Taylor Davies-Mahaffey, met and conferred telephonically with counsel for Respondent Michael
13 Youril and Lars Reed, regarding the County’s intent to file a demurrer and a motion to strike.
14 During the very brief conversation, Respondent’s counsel restated they intended to move to strike
15 paragraphs 1-80 from the Petition. (Mastagni Dec. ¶ 5.) Initially, Mr. Youril asserted the
16 paragraphs at issue were relevant to Petitioner’s PERB Charge alleging bad faith bargaining and
17 other unfair labor practices. Mr. Mastagni explained that while the actions before PERB involved
18 some overlapping factual circumstances, the legal cause of action and relief were distinct.
19 Petitioners’ counsel further informed Mr. Youril that the relevance of the 70 paragraphs identified
20 varied by subject matter and relevance to this action. Mr. Mastagni offered examples, pointing out
21 that some paragraphs dealt with the parties bargaining over measure F and overall compensation,
22 other dealt with subsequent voter initiatives to retain Measure F, other dealt with the County’s
23 inconsistent interpretations of Measure F and misrepresentations. Mr. Mastagni also explained that
24 the allegations had multiple and varied relevance, including the legal theories and the remedies.
25 Regarding remedies, Petitioners explained that impacts of the County’s actions and their
26 arbitrariness are relevant to fee liability. The County suggested that allegations related to attorney
27 fee liability did not need to be included in the Petition. (*Ibid.*)

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1 During this phone call, Petitioners' counsel repeatedly invited the County to discuss each
2 allegation at issue so the parties could properly confer over its relevance and advised that it was
3 not feasible to adequately meet and confer over 70 paragraphs of the Petition collectively.
4 (Mastagni Dec. ¶ 6.) Mr. Mastagni also advised that Petitioners were willing to amend the Petition
5 if the County could articulate individualized grounds for each allegation they desired to strike. Mr.
6 Mastagni advised that insisting on conferring over all 70 paragraphs collectively would waste
7 judicial resources and spike the litigation costs as the individualized consideration would end up
8 eventually being briefed. Respondent's counsel consistently declined to discuss the relevance of
9 the individual paragraphs. As an alternative, Petitioners' counsel also suggested Respondent limit
10 the number of paragraphs it sought to strike to make the meet and confer discussions more fruitful.
11 Respondent's counsel declined those offers as well. (*Ibid.*)

12 On January 13, 2022, Mr. Mastagni sent a letter to Mr. Youril, memorializing the attempt
13 to meet and confer and once again offered to discuss each paragraph the County intended to move
14 to strike. (Mastagni Dec. ¶ 7, Exhs. 2-3.) Mr. Mastagni further reiterated that were Respondent to
15 reduce the number of paragraphs it sought to strike, the meet and confer discussions would be more
16 efficient. In response, the County again declined to meet and confer in good faith regarding the
17 disputed paragraphs. (*Ibid.*)

18 In the spirit of cooperation and the hope of avoiding the expenses associated with a motion
19 to strike, Petitioners filed an Amended Petition on January 21, 2022, unilaterally removing some
20 of the disputed material. (Mastagni Dec. ¶ 8.) None of the amendments were agreed upon during
21 the meet and confer call. (*Ibid.*) In a brief conversation on January 28, 2022, the County's counsel
22 again declined to discuss any allegations with particularity. (Mastagni Dec. ¶ 9.) Instead, Mr.
23 Youril summarily advised that his position regarding the motion to strike was unchanged and there
24 was nothing further to discuss. Instead of meeting and conferring in good faith regarding the
25 objections to each disputed allegation, the County filed its Motion to Strike and Demurrer on
26 February 2, 2022, seeking to strike 54 paragraphs from the Amended Petition. Thus, the County
27 failed to meet and confer with Petitioner in good faith following the filing of the Amended Petition,
28 in contravention of the controlling statute. (See Code Civ. Proc. § 435.5(a)(2).)

1 By failing to meet and confer in good faith, the County's Motion to Strike is improper. On
2 this basis alone, the County's Motion should not be considered or should be denied in its entirety if
3 any allegations are proper.

4 **B. The Material the County Seeks to Strike is Relevant.**

5 "[A] matter which is essential to cause of action should not be stricken . . . and it is error to
6 do so. (*Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 242 [citing cases] [internal citations
7 omitted].) "Where a motion to strike is so broad as to include relevant matter, the motion should
8 be denied in its entirety.'" (*Triodyne, supra*, 240 Cal.App.2d at 542; [see also *Allerton v. King*
9 (1929) 96 Cal.App. 230, 234].) Material essential to laying the foundation of a claim is *per se*
10 relevant. (See *California Farm & Fruit Co. v. Schiappa-Pietra* (1907) 151 Cal. 732, 745 [where
11 facts alleged lay the foundation for any part of a claim for relief properly sought, it is error to strike
12 those facts even if they are not absolutely necessary].) The relevance of foundational facts is even
13 more apparent where, as here, a matter is particularly complicated. (*Id.* at 741).

14 A "relevant" fact is one which has "*any* tendency to prove or disprove *any* disputed fact
15 that is of consequence to the determination of the action." (Evid. Code § 210 [emphasis added].)
16 A fact is relevant if it tends to prove any position taken by Petitioners in regard to the dispute at
17 issue, and/or if it tends to disprove any position taken by the County in regard to the dispute at
18 issue. The foundational facts the County seeks to strike are instrumental to Petitioners' case in both
19 regards. Thus, the disputed paragraphs in the Petition are plainly relevant and not subject to strike.

20 **1. The Disputed Material is Relevant for Attorney's Fees and Damages.**

21 First, each and every allegation establishing the foundational facts of this dispute are
22 relevant to Petitioners' entitlement to attorney's fees and damages. (See Gov. Code § 800 [awarding
23 attorneys' fees and costs for government actions that are arbitrary and capricious].) The Petition
24 sets forth facts regarding the County's continuously changing position on the Measure F formula
25 during pending negotiations to demonstrate that the repeal was not done in good faith. Furthermore,
26 allegations of misrepresentations to the public, arbitrary and capricious behavior, improper
27 motivations, and attempts to overturn the express will of the electorate are relevant to attorney's
28 fees and damages. (See Code Civ. Proc. § 1021.5[attorneys' fees granted for the enforcement of

1 an important right affecting the public interest].) Facts pleaded regarding appropriate damages are
2 relevant and should never be stricken from complaints.¹ (See *Johnson v. Central Aviation Corp.*
3 (1951) 103 Cal.App.2d 102, 105-106 [improper to strike as irrelevant complaint allegations related
4 to damages].)

5 **2. The Disputed Material Relates to the Crux of Petitioner's Argument.**

6 The Petition sets forth three causes of action, alleging that the County violated Elections
7 Code section 9125, the California Constitution, and the Placer County Code by unilaterally
8 repealing Measure F (Placer County Code section 3.12.040) and then imposing deputy salaries that
9 violated the ordinance. Petitioners contend that Measure F was properly enacted by initiative in
10 1976. However, even if the 1976 initiative vote was invalid (as the County claims it was), the Placer
11 County Board of Supervisors adopted the Measure F formula over the years, including multiple
12 resolutions affirming section 3.12.040, *after* the incorporation of the Charter. Thus, regardless of
13 when Measure F/section 3.12.040 became effective, the popular votes in 2002 and 2006, in which
14 the voters of Placer County twice refused to repeal Measure F, sufficiently implicate Election Code
15 9125 and the Constitution's protection of the people's initiative power. (See Elec. Code § 9125
16 ["No ordinance proposed by initiative petition and adopted either by the board of supervisors
17 without submission to the voters or adopted by the voters shall be repealed or amended except by
18 a vote of the people, unless provision is otherwise made in the original ordinance."].)

19 During the 2002 and 2006 elections, the County and the Placer County Board of Supervisors
20 created and distributed election materials, on which the Placer County electorate relied, that a "no"
21 vote retained the Measure F formula and that a "yes" vote repealed the Measure F formula. (See
22 Exhibits "A" and "C" to the Amended Petition.) Any ambiguity as to the import of the "no" vote
23 must be resolved in favor of the will of the electorate to affirm section 3.12.040 through the
24 initiative process. (See *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 946
25 [holding "Our answer is rooted firmly in the long-standing and consistent line of cases emphasizing
26 courts' obligation to protect and liberally construe the initiative power and to narrowly construe

27
28 ¹ Although County maintains that fee liability is not relevant unless Petitioners prevail, that argument is not a basis to
strike any of the material allegations related to damages. Amending remedies into the Petition at a later stage simply
wastes the time of both parties as well as scarce judicial resources.

1 provisions that would burden or limit its exercise.”] [internal citations omitted].) Thus, regardless
2 of the efficacy of the 1976 initiative, the failed attempt to repeal Section 3.12.040 in 2002, and the
3 subsequent failed attempt to repeal section 3.12.040 in 2006, independently prohibits Section
4 3.12.040’s repeal without a vote of the people. (See Elec. Code § 9125.) Alternatively, petitioners
5 argue that the California Constitution prevents the County from nullifying the electorate’s lawful
6 vote on these initiatives. (See Respondents’ Opposition to Demurrer at p. 19.) In moving to strike
7 the disputed paragraphs of the Petition, the County seeks to prevent the Court from assessing the
8 legal import of the 2002 and 2006 initiative measures and the broad, inherent Constitutional
9 protections against government action that would nullify the will of the electorate.

10 Plainly, much of material the County seeks to strike from the Petition are allegations that
11 represent the core of Petitioners’ causes of action and go to rebut the County’s claims. Each and
12 every one of the disputed allegations supporting Petitioners’ position regarding the foregoing or
13 calling into question the County’s position regarding the foregoing are manifestly relevant to the
14 instant matter and thus cannot be properly stricken. (Evid. Code § 210.)

15 **3. Each One of the Disputed Paragraphs is Relevant.**

16 **a. Paragraphs 12, 14, 15.**

17 The County’s Motion states the foregoing paragraphs “contain allegations about prior
18 (failed) ballot initiatives attempting to repeal Placer County Code section 3.12.040.” (Motion at p.
19 7.) The relevance of these paragraphs is discussed at length above. The allegations contained in
20 these paragraphs are relevant to the County’s claim that Measure F was eliminated by enactment of
21 the Charter. Were that the case, the County would have no need to seek repeal of Measure F in
22 either 2002 or 2006.

23 Moreover, the County’s February 2, 2022 requests for judicial notice demonstrates that the
24 history of Measure F, set forth by the Petition, spanning from 1976 to the present, is inherently
25 relevant to the dispute. The requests for judicial notice are themselves the County’s tacit admission
26 that the facts set forth in the Petition are relevant, particularly as the allegations claim the will of
27 the voters as expressed at the ballot box is material to the instant legal dispute. Relevant matters
28 which are properly the subject of judicial notice are appropriate in complaints, and are treated as

1 well-pleaded facts. (See *City of Hawthorne ex rel. Wohlner v. H&C Disposal Co.* (2003) 109
2 Cal.App.4th 1668, 1678.) As noted above, these facts are also relevant to the question of attorney's
3 fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions
4 that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the
5 enforcement of an important right affecting the public interest].)

6 **b. Paragraphs 10, 11, 13, 30, and 38-41.**

7 The County's Motion states the foregoing paragraphs "contain allegations regarding prior
8 representations and public statements allegedly made by County representatives regarding the
9 validity and legal status of Measure F." (Motion, p. 7.) The statements of County public officials
10 and County representatives are the official legal pronouncements of the County, specifically relied
11 upon by the voters. (See Evid. Code § 664 [It is presumed that an official duty has been regularly
12 performed]; see also *Walker v. Los Angeles Cnty.* (1961) 55 Cal.2d 626, 636 [en banc] [the acts of
13 the local legislature carry a rebuttable presumption that official duty has been performed].) Thus,
14 the pronouncements are directly relevant evidence of voter intent when voting for or against
15 Measure F. For example, an article written by the former Placer County CEO shows that at the
16 time of the enactment of the Charter, Measure F was construed as valid and compatible with the
17 Charter, and remained in effect for decades. (See Exhibit "B" to the Amended Petition.)

18 Thus, the allegations contained in these paragraphs are relevant because they show the
19 County's position upon which the electorate relied when voting on initiative measures. They are
20 also relevant to show that between 1980 and 2003 county officials have construed 3.12.040 as
21 compatible with the Charter. They further illustrate positions upon which Petitioners relied during
22 collective bargaining and negotiations. The paragraphs are relevant to credibility determinations,
23 as they demonstrate the County's position over time, and the County's representations to Petitioners
24 and the public. As noted above, these facts are also relevant to the question of attorney's fees and
25 damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that
26 are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement
27 of an important right affecting the public interest].)

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1 **c. Paragraph 16.**

2 The County's Motion states the foregoing paragraph "alleges the DSA 'accepted the
3 judgment of the voters' with respect to its failed attempt to repeal section 3.12.040 in 2006."
4 (Motion at p. 7.) The relevance of this paragraph is discussed at length, above. This paragraph sets
5 forth DSA's position as it relates to collective bargaining regarding Measure F and section 3.12.040.
6 It is of note, and relevant to the instant dispute, that the County only construed Measure F as in
7 conflict with the Charter when the DSA would not submit to the County's demands that the DSA
8 subvert the will of Placer County voters. The gravamen of the Petition is that the County breached
9 a ministerial duty by failing to abide by the Elections Code and the will of the voters. The relevance
10 of these paragraphs is further demonstrated by the County's own requests for judicial notice of past
11 election results. As noted above, these facts are also relevant to the question of attorney's fees and
12 damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that
13 are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement
14 of an important right affecting the public interest].)

15 **d. Paragraphs 17-19 and 21.**

16 The County's Motion states the foregoing paragraphs "contain allegations regarding the
17 parties' past practice of enacting salary increases consistent with Measure F." (Motion at p. 8.)
18 The relevance of these paragraphs is discussed at length above. These paragraphs demonstrate that
19 for over 40 years, the parties interpreted Measure F in a consistent manner and shows a course of
20 conduct of both parties regarding their understanding of Measure F. These paragraphs are directly
21 relevant to credibility determinations, including the position of the parties in collective bargaining
22 over time. These facts demonstrate the County's position on which Petitioners relied during
23 collective bargaining and negotiations. As noted above, these facts are also relevant to the question
24 of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for
25 government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees
26 granted for the enforcement of an important right affecting the public interest].)

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1 **e. Paragraph 20.**

2 The County's Motion states the foregoing paragraph "contains allegations regarding a prior
3 amendment to County Code section 3.12.040 that did not affect the salary-setting formula for
4 deputy sheriffs." (Motion at p. 8.) Were section 3.12.040 negated by the Charter, the County would
5 have no need to amend the code section. Further, this paragraph is relevant to show the County's
6 position on the legality of Measure F over time. The paragraph is also relevant in making credibility
7 determinations. These facts are relevant to the question of attorney's fees and damages.

8 **f. Paragraphs 22 and 23.**

9 The County's Motion states the foregoing paragraphs "consist of unsupported speculation
10 regarding the County's motives for repealing Section 3.12.040 and the County's legal position
11 regarding its authority to do so." (Motion at pp. 8-9.) Allegations made upon information and
12 belief are decidedly appropriate at the complaint stage. A "plaintiff may allege on information and
13 belief any matters that are not within his personal knowledge, if he has information leading him to
14 believe that the allegations are true.'" (*Doe v. Cty. Of Los Angeles* (2007) 42 Cal.4th 531, 570
15 [quoting *Pridonoff v. Balokovich* (1951) 36 Cal.2d 788, 792].) Indeed, one of the purposes of
16 litigation is to discover evidence that supports pleading allegations. Further, the paragraphs are
17 relevant because they go directly to the subject matter of the dispute; whether the County knew it
18 did not have the legal authority to repeal Measure F unilaterally. The relevance of these paragraphs
19 is demonstrated by the County's own requests for judicial notice of past election results. As noted
20 above, these facts are also relevant to the question of attorney's fees and damages. (See Gov. Code
21 § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious;
22 Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right
23 affecting the public interest].)

24 **g. Paragraph 24.**

25 The County's Motion states the foregoing paragraph "concerns the County's policy for
26 determining compensation for members of the County Board of Supervisors." (Motion at p. 9.)
27 The paragraph in fact alleges that the formula for compensating the members of the Board of
28 Supervisors is the same as the Measure F formula. This paragraph is relevant to show the County's

1 position on the legality of Measure F over time. The paragraph is also relevant in making credibility
2 determinations. Furthermore, these facts are relevant to the question of attorney's fees and
3 damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that
4 are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement
5 of an important right affecting the public interest].)

6 **h. Paragraphs 25-34, 47-48, and 52-53.**

7 The County's Motion states the foregoing paragraphs "contain allegations regarding the
8 parties' most recent collective bargaining negotiations beginning in 2018 and leading to a
9 declaration of impasse." (Motion at p. 9.) The allegations contained in these paragraphs are
10 relevant because they demonstrate the County's position upon which Petitioners relied during
11 collective bargaining and negotiations. The County has varied its position on whether Measure F
12 represented a floor or ceiling regarding compensation. The facts demonstrate that Measure F did
13 not prevent the board from negotiating or determining overall compensation. The requirements set
14 forth by Measure F are thus relevant to the amount of discretion the Board of Supervisors retains
15 over setting compensation. (See *Kugler v. Yocum* (1968) 69 Cal.2d 371, 376 [grants of legislative
16 authority must be accompanied by adequate safeguards to prevent its abuse].) Further, the
17 paragraphs are relevant to credibility determinations, as they demonstrate the County's position
18 over time, and memorialize the County's representations to Petitioners. These facts are also
19 relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys'
20 fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5
21 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

22 **i. Paragraphs 35-37 and 58-63.**

23 The County's Motion states the foregoing paragraphs "contain allegations regarding a
24 statutory factfinding proceeding the parties participated in following the negotiation impasse."
25 (Motion at p. 10.) The factfinding process was presided over by an experienced mediator and
26 arbitrator *at the request of County*. (See Exhibit "G" to the Amended Petition.) The factfinding is
27 inherently relevant to the dispute as the factfinding process thoroughly developed the background
28 of the dispute, and examined the legal positions of both parties. The findings of fact are judicially

1 noticeable for their veracity in addition to providing important background information and legal
2 research to the Court. As discussed above, facts that are appropriately judicially noticeable are
3 properly pleaded in complaints. (See *City of Hawthorne, supra*, 109 Cal.App.4th at 1678.)
4 Moreover, the factfinding is relevant to demonstrate the parties' positions over time, and assist the
5 Court in making credibility determinations. Thus, the facts as pleaded are relevant to the Petition.
6 Furthermore, these facts are relevant to the question of attorney's fees and damages. (See Gov.
7 Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and
8 capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important
9 right affecting the public interest].)

10 **j. Paragraphs 42-45.**

11 The County's Motion states the foregoing paragraphs "contain allegations regarding the
12 DSA's filing of an unfair practice charge before the Public Employment Relations Board ("PERB")
13 and the County's response." (Motion at pp. 10-11.) Petitioner's unfair labor practice charge and
14 the County's response (including their own unfair labor practice charge) are both judicially
15 noticeable and relevant. (See *City of Hawthorne*, 109 Cal.App.4th at 1678.) The allegations
16 contained in these paragraphs are relevant because they demonstrate the County's position upon
17 which Petitioners relied during collective bargaining and negotiations. The paragraphs are also
18 relevant to credibility determinations, as they demonstrate the County's position over time, and
19 memorialize the County's representations to Petitioners. As noted above, these facts are also
20 relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys'
21 fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5
22 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

23 **k. Paragraphs 46 and 49-50.**

24 The County's Motion states the foregoing paragraphs "consist of further unsupported
25 speculation regarding the County's motives...for making certain proposals during collective
26 bargaining." (Motion at p. 11.) As noted above, allegations made upon information and belief are
27 decidedly appropriate at the complaint stage. (See *Doe, supra*, 42 Cal.4th at 570.) The County's
28 motives for its repeatedly changing position on the legality and validity of Measure F are relevant

1 to demonstrate the County's position over time, and to assist the Court in making credibility
2 determinations. The County's motives are also directly relevant to the question of attorney's fees
3 and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions
4 that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the
5 enforcement of an important right affecting the public interest].)

6 **l. Paragraph 51.**

7 The County's Motion states the foregoing paragraph "contains allegations regarding the
8 County's negotiations with another bargaining unit and subsequent implementation of salary
9 changes for that bargaining unit." (Motion at p. 11.) The impact that the County's meandering
10 position on Measure F has on collective bargaining units within the County is the precise subject
11 matter of this dispute. The facts are further relevant because they demonstrate the County's position
12 over time, and will assist the Court in making credibility determinations. The facts are also directly
13 relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys'
14 fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5
15 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

16 **m. Paragraph 54-57.**

17 The County's Motion states the foregoing paragraphs "contain allegations regarding
18 County's attempts to meet and confer with the DSA over its proposed repeal of Section 3.12.040."
19 (Motion at pp. 11-12.) The allegations contained in these paragraphs are relevant because they
20 demonstrate the County's position upon which Petitioners relied during collective bargaining and
21 negotiations. The paragraphs are also relevant to credibility determinations, as they demonstrate
22 the County's position over time, and memorialize the County's representations to Petitioners.
23 These facts are relevant to the question of attorney's fees and damages. (See Gov. Code § 800
24 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code
25 Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the
26 public interest].)

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1 **C. The Disputed Paragraphs Comply with California Standards of Pleading.**

2 The Petition is entitled to liberal construction. (Code Civ. Proc. § 452.) When reviewing
3 pleadings, courts draw all reasonable inferences in favor of the allegations therein. (*Beck, supra*,
4 154 Cal. App. 3d at 379.) Courts “read allegations of a pleading subject to a motion to strike as a
5 whole, all parts in their context, and assume their truth. (*Cryolife, supra*, 110 Cal. App. 4th at
6 1157.) Before striking a complaint, “every reasonable doubt must be made in favor of the
7 pleading.” (*Arnold v. Hibernia Savings & Loan Soc.* (1944) 23 Cal.2d 741, 744).

8 It is well settled that issues not raised in the pleadings generally cannot be adjudicated. (*Lein*
9 *v. Parkin* (1957) 49 Cal.2d 397, 400-401 [en banc].) The Petition necessarily pleads the
10 foundational facts required to properly present the disputed issues to the Court. The Petition must
11 adequately frame all relevant issues in order for the court to properly decide what evidence is
12 relevant to an ultimate determination. (See *Linder v. Cooley* (1963) 216 Cal.App.2d 390, 397.)
13 The Petition must set forth facts upon which Petitioners will rely through the prosecution of the
14 entire case, including a potential appeal, because parties may not raise issues on appeal that were
15 not raised by the pleadings. (See *Viglione v. Cty. And Cnty. Of San Francisco* (1952) 109
16 Cal.App.2d 158, 159-160.) Allegations that “would entitle the plaintiff to relief, at least in some
17 measure” are not properly stricken. (*Honan v Title Ins. & Trust Co.* (1935) 9 Cal.App. 2d 675,
18 678.) For these reasons, among others, striking a pleading “is a harsh proceeding, and should only
19 be resorted to in extreme cases.” (*Burns v. Scoofy* (1893) 98 Cal. 271, 276.)

20 The County’s argument that the facts do not relate directly to the causes of actions pleaded
21 is both erroneous and irrelevant. “California requires the pleading of facts pursuant to its system
22 of ‘code pleading’”. (*Bach v. Cnty. of Butte* (1983) 147 Cal.App.3d 554, 561.) The County’s
23 Motion to Strike seeks to strip Petitioners’ Petition of all relevant facts and turn it into a notice
24 pleading, which is not appropriate in California courts. (See *Id.*) The relevance of the facts pleaded
25 is appropriately determined by the Court, not the County’s own self-serving averments that the
26 disputed paragraphs are irrelevant. “It is an elementary principle of modern pleading that the nature
27 and character of a pleading is to be determined from its allegations, regardless of what it may be
28 called, and that the subject matter of an action and issues involved are determined from the facts

1 alleged rather than from the title of the pleadings”. (*B.L.M. v. Sabo & Deitsch* (1997) 55
2 Cal.App.4th 823, 842 [citing cases] [internal punctuation and citations omitted].) “In short, a
3 plaintiff is entitled to relief on any claim supported by the facts pleaded even if that claim is not
4 mentioned in the title of the complaint.” (*Id.*)

5 Here, all of the disputed paragraphs, as noted above, have multiple bases for relevance. The
6 disputed facts are relevant because the facts as pleaded in the Petition frame the issues for the Court,
7 and must be pleaded or forever forfeited. The Petition should be liberally construed, with all
8 questions as to the relevance of the facts pleaded therein resolved in favor of Petitioners. This is
9 not the type of extreme case that would warrant striking any of the disputed allegations. Thus, the
10 County’s Motion to Strike should be denied in its entirety.


11 **IV. CONCLUSION**

12 The County’s Motion to Strike improperly seeks to strike over half of the Petition. The
13 County entirely failed to comply with the controlling statute because it failed to adequately meet
14 and confer and neglected to identify, with required specificity, the allegations that should allegedly
15 be stricken from the Petition and the legal reasons for striking those allegations. Further, the
16 allegations the County seeks to strike from the Petition are all demonstrably relevant. Each and
17 every allegation contained in the Petition properly sets forth facts upon which some relief can be
18 granted and adequately frames the relevant legal issues for the Court. The disputed facts, as
19 pleaded, cannot properly be stricken, and striking the disputed facts would be error. Accordingly,
20 the County’s Motion to Strike should be denied in its entirety.

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22 Respectfully Submitted:

23 DATED: February 17, 2022

MASTAGNI HOLSTEDT, APC

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25 
26 DAVID E. MASTAGNI, ESQ.
27 TAYLOR DAVIES-MAHAFFEY, ESQ.
28 Attorneys for Petitioners

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I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and am not a party to the within action. My business address is 1912 I Street, Sacramento, California 95811. My e-mail is jdelgado@mastagni.com.

X BY OVERNIGHT DELIVERY [C.C.P. §§1013(c) & (d)]:
I enclosed the below-described documents in a sealed envelope/package provided by an overnight delivery carrier and addressed to the persons as set forth below. I placed the envelope/package for collection and overnight delivery at the overnight delivery carrier's office or regularly utilized drop box; and

Based on a court order or an agreement of the parties to accept electronic service, I caused a .pdf version of the below-described documents to be sent to the persons at the electronic mail addresses set forth below.

• PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO STRIKE

Michael Youril myouril@lcwlegal.com Lars Reed reed@lcwlegal.com Liebert Cassidy Whitmore 5250 North Palm Ave, Ste 310 Fresno, CA 93704	
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Jessica Delgado